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VIRGINIA LAW REGISTER

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The Legislature will have been in session two weeks when this REGISTER meets the eyes of the reader. That there is much important work to be done goes without saying, and that there is much important work which it should do and will not have time to do, is equally true.

The Virginia Legislature of 1910.

A successor to Judge R. H. Cardwell of the Supreme Court of Appeals is to be chosen. That Judge Cardwell will be his own successor there seems to be no doubt, and there should not be. He has made an able, conservative, hardworking justice and his opinions stand high with the profession. They indicate research and labour, good hard common sense, and are couched in plain, direct language free from ambiguity and models of terse and clear statement.

The REGISTER has from time to time called attention to omissions in our law as codified. One important amendment to § 3537 of our Code got to the bill and committee stage, but never emerged upon the floor. Only those who have been inconvenienced by having to wait for a term of court to have a commission issued to take testimony upon the probate of a will can appreciate the necessity of a change permitting the *Clerk* to issue the commission. The clerk now does everything which could be done in the *ex parte* probating of a will. Why should he not be allowed to issue the commission to take testimony in the cases provided for by the section? No valid or sufficient reason can be presented. Indeed the omission to make this change was merely an oversight on the part of the Committee on Revision, and it ought to be corrected at this session of the Legislature.

The tendency today of law-makers and courts is to have as

speedy an end to litigation as possible. There is every good reason why this should be done, and the idea has been put in a law maxim many, many years ago.

**Appellate Procedure Where
Verdict Is Set Aside on
Ground of Excessive or
Inadequate Damages.**

Some legislation ought to be passed allowing the Supreme

Court of Appeals in any case in which they set aside a verdict on account of excessive or inadequate damages, to fix the amount which the verdict ought to be. It has all the evidence before it. From that evidence the judges can more calmly and intelligently determine the proper amount than any other tribunal. Why send the case back to have all the same evidence gone over; the same tedious and often long-protracted trial to consume the time of the Courts and the people, when the same end can be reached at once by the Supreme Court? That Court seldom interferes it is true, with the verdict of a jury fixing damages and has laid down the salutary rule that it will not interfere unless the amount of damages is so great as to convince the court that it is so disproportioned to the injury inflicted and the character of the offense as to shock the understanding and to induce the belief that the jury were influenced by improper motives.

Much more seldom does the court reverse on account of the inadequacy of damages. Why therefore, in the few cases in which it is compelled to interfere, it should not be allowed—indeed compelled—to fix what in its opinion is a fair and just amount to be allowed—if anything—in the case before it. The record is all there; the evidence is there upon which they base their opinion that too much or too little has been allowed. There is then every reason why the case should be ended then and there, and the court say what, from the evidence in the record ought to have been allowed by a jury. The five judges are certainly as able to do justice in this respect as the seven jurymen. We hope some law-makers will convince the Legislature of the wisdom of such a course and draft a bill to carry it out.

And coming back to the Legislature, we hope that whatever

acts may be passed, they may be few and salutary. "*Ubi Plurimæ leges pessima respublica*," Tacitus wrote

Law Making. many years ago: "When laws are most abundant, the republic is in the worst condition." It seems to have been the fallacy of all the ages that you could make people better and happier by laws. It is a fallacy which just now seems rampant throughout this country and wise legislators should seriously reflect before they place upon the statute books many of the proposed enactments which are suggested by fanatics or ignorant, though well-meaning "reformers of the public morals." There is enough to do in getting our present laws in condensed and correct shape; pruning out excrescences; simplifying procedure; making plain ambiguities; and carefully defining rights and liabilities.

There are many "apples of discord" ready for the Legislative table. We hope they may be pared and cored at least, or put in cold storage for an indefinite time.

The *Law Journal* (London) in an obituary notice of Viscount Selby—who as plain Mr. Gully was Speaker of the House of Commons for ten years—tells a story which

For the Bud- should encourage the young lawyer waiting
ding Barrister. for practice.

He and two other young barristers were dining together and discussing very dolorously their gloomy prospects. One determined to go to India; another to the Straits Settlement; whilst the third bade them cheer up and hope for better things. The last became the distinguished Lord Russell of Killowen—the first Lord Herschell, and the second Speaker of the House of Commons, and died a member of the House of Lords.

It strikes an American as a singular thing that for many years prior to his election in 1875 to the Speakership of the House of Commons no lawyer had filled that position.

He made his own will, and unlike most great lawyers made one which in brevity has seldom been surpassed. It contained twenty-eight words, of which four were the names of his wife, to whom he left everything, appointing her his executrix.

Our English cousins do not believe in the combination of an auto and a jug. It is an offence in the "tight little island" punished by fine and imprisonment to be drunk while in charge of a motor car. As usual in England, justice does not trifle with too nice or finely drawn distinctions. An unfortunate gentleman tried to get on a motor-cycle whilst in a state of intoxication; he naturally did not succeed, but proceeded to wheel his cycle by hand to a station. Caught in the act, he was convicted under the act. He was in charge of the machine while drunk and so was "taken in charge." Whether the act he committed was strictly in the purview of the act which made intoxication an offence "in connection with the driving of a motor car," might be questioned, but the decision was a salutary one. No telling what a drunken man may do with a machine, and our Legislature might take a hint from the English and pass a similar act. "Joy rides" would then be shorn of half their danger and a great stride taken towards temperance amongst autoists.

In the late case of *Hulton v. Jones* decided by the English House of Lords in December last a curious result has been reached, and one, it seems to us, hardly consonant with justice. An author described a deeply dyed villain in his novel and gave him the name of an eminently respectable and prosaic gentleman in real life, of whose very existence he was ignorant until made painfully aware of it by a suit for libel. In vain he protested that he had never even heard of "such a personage" and had no idea of libelling him or any other man. But the jury gave the plaintiff substantial damages and their verdict was sustained by England's highest tribunal. Lord Justice Fletcher Moulton dissented in the Court of Appeals in an opinion which cited, it seems to us, almost unanswerable authorities and reason against such a verdict. Authors, in England at least, must hereafter be careful in their nomenclature of villains. For there is nothing to prevent several persons, if they happened to possess the name of the villain, from recovering separate damages.

We should have thought that the rule was that the words which

the defendant wrote and published had to be defamatory of the plaintiff, and we cannot see how any other averment and proof would sustain a verdict. But Scotland has followed *Jones v. Hulton* in a more recent case. George Reeves was—and is—a well known music hall celebrity. The *Weekly News* in Glasgow, while he was performing there, published the account of a murderous attack and suicide committed by one George Reeves, setting out at length Reeves' murderous attack upon his wife, and subsequent suicide, but failing to state that said George did all these things in New York. George Reeves of, and in, Glasgow sued at once and Lord Guthrie allowed the issue. He held that it was not necessary to aver and prove that the defendants actually intended to refer to the plaintiff; but that it was enough that they so acted as to lead people reasonably to believe that they referred to the plaintiff.

By the by, in Scotland the plaintiff in a libel suit is styled "the pursuer" and the defendant the "defender." The "pursued" it strikes us would be better, for Reeves certainly had the *News* on the run. We imagine that hereafter "the chiel amang" the Scotch "takin' notes" will be careful how "he prents 'em" if names are involved.

We suppose a very contemptuous smile would flit over the face of most American judges if they were asked to decide a case involving such a simple matter as that of a tenant plowing up pasture land, upon the authority of a case decided in 1676. And yet that very thing was done in the case of *Bush v. Lucas*, decided by Mr. Justice Eve in December last in an English Court, so says the *London Law Journal*.

"Under an agreement entered into in 1895 the landlord's predecessor in title let a farm, extending over 215 acres, to the defendant for one year and so on from year to year, at an annual rental, subject to twelve calendar months' notice on either side. Of the fifty-three acres of arable land comprised in the farm twenty-two acres had, before the date of the agreement, been tilled by the tenant, but in 1895 he sowed it with grass seed. In 1901 he broke up nine acres of this land

and tilled it with wheat, and in 1902 again sowed it with grass seed. In 1909 the tenant received twelve months' notice to quit from the landlord. He inquired whether the landlord would pay for the grass laid down, and said that in case of refusal it was his intention to plough up the land. The landlord thereupon commenced an action for an injunction, on the ground that the defendant threatened to commit a breach of the covenant against committing waste or spoil or ploughing up pasture land. Mr. Justice Eve, in dismissing the action, said that the argument as to the effect of the covenant was disposed of by the decision in *Goring v. Goring*, a case decided as long ago as 1676. There an injunction was refused on an application to restrain a lessee from ploughing pasture lands which had remained unploughed during the continuance of a lease for thirty years, but had been ploughed within six years previously, the ground being that though the right to plough had never been exercised by the tenant, he had never lost it. Mr. Justice Eve said it would be straining language beyond all reasonable limits if he were to hold that a field tilled to corn at the date of the agreement, and for many years previously, had become pasture land because the tenant had in subsequent years left it for a considerable period in grass. A further point was raised on behalf of the plaintiff, that the tenant's threat to plough up the grass involved a breach of the covenant to farm the land upon the most approved system of husbandry. The learned judge would not, however, accept the proposition that an act which, admittedly, would not be a breach of such a covenant when the tenant was not under notice to quit, would be converted into a breach as soon as notice to quit was served upon him. This judgment on both points seems to be in accordance with common sense, as well as with the well-established principles governing the rights of agricultural tenants."